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2002HOCHI00538 - UNCLASSIFIED

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ACTION EAP-00

INFO	LOG-00	AGRE-00	AID-00	CEA-01	CIAE-00	CTME-00	DINT-00
	DODE-00	ITCE-00	DOTE-00	SRPP-00	EB-00	EXME-00	E-00
	FAAE-00	FBIE-00	UTED-00	VC-00	FRB-00	H-01	TEDE-00
	INR-00	ITC-01	LAB-01	LOC-01	L-00	VCE-00	AC-01
	NSAE-00	NSCE-00	OES-01	OMB-01	OPIC-01	PA-00	PRS-00
	ACE-00	SP-00	SSO-00	SS-00	STR-00	TEST-00	TRSE-00
	USIE-00	EPAE-00	DRL-02	G-00	NFAT-00	SAS-00	/011W

-----B177F4 211149Z /38

FM AMCONSUL HO CHI MINH CITY  
TO SECSTATE WASHDC PRIORITY 6374  
INFO AMEMBASSY HANOI PRIORITY  
USDOC WASHDC

UNCLAS SECTION 01 OF 03 HO CHI MINH CITY 000538

SIPDIS

STATE PASS TO USTR FOR EBRYAN  
USDOC FOR 3132/OIO/EAP/KELLEHER  
USDOC FOR 1431/MAC/AP/HPPHO

E.O. 12958: N/A  
TAGS: [ECON](#) [ETRD](#) [KIPR](#) [VM](#) [IPROP](#)  
SUBJECT: HCMC FACES REGIONAL IPR WOES

SUMMARY

1. AFTER THE BILATERAL TRADE AGREEMENT JOINT COMMITTEE  
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MEETING IN HANOI, MEMBERS OF THE US DELEGATION SPENT A DAY IN HCMC FOCUSING ON INTELLECTUAL PROPERTY RIGHTS (IPR) IN THE COUNTRY'S ECONOMIC HUB. LOCAL OFFICIALS INDICATED THEY ARE AWARE OF IPR PROBLEMS AND ARE TRYING TO FIND WAYS TO ADDRESS THEM. VIETNAMESE BUSINESSPEOPLE COMPLAIN THAT RAMPANT IPR VIOLATIONS ARE HURTING THEIR BOTTOM LINE. HOWEVER, PIRATED PRODUCTS, PARTICULARLY OPTICAL DISCS PRODUCED IN CHINA, ARE WIDELY AVAILABLE THROUGHOUT HCMC. ENFORCEMENT, SPLIT AMONG SEVERAL DIFFERENT AGENCIES, IS UNCOORDINATED AND INEFFECTUAL. THE DELEGATION STRESSED TO LOCAL OFFICIALS THAT IPR ENFORCEMENT WAS A KEY COMMITMENT IN THE BTA, AND IMPORTANT TO ECONOMIC DEVELOPMENT, A SENTIMENT WITH WHICH HCMC OFFICIALS EXPRESSED AGREEMENT. THE DAY ENDED WITH A VISIT TO HCMC'S "HARD ROCK CAF" WHICH US RIGHTS-HOLDERS HAVE BEEN TRYING - UNSUCCESSFULLY - TO CLOSE DOWN FOR MORE THAN A YEAR. END SUMMARY.

DELEGATION STRESSES NEED TO PROTECT IPR

2. AT THE CONCLUSION OF THE FIRST MEETING OF THE JOINT COMMITTEE OF THE BILATERAL TRADE AGREEMENT (BTA), MEMBERS OF THE US DELEGATION FROM USTR, STATE, COMMERCE, AND THE COPYRIGHT OFFICE JOINED CONGEN ECONOFFS IN HO CHI MINH CITY TO REVIEW THE IPR SITUATION IN THE CITY. THE DELEGATION REINFORCED THE MESSAGE DELIVERED IN HANOI: IMPROVING IPR PROTECTION WAS A KEY BTA COMMITMENT, INTEGRAL TO THE WTO ACCESSION PROCESS, AND VITAL TO VIETNAM'S ECONOMIC DEVELOPMENT. NOT SURPRISINGLY, VIETNAMESE OFFICIALS - AT THE DEPARTMENT OF TRADE, THE MARKET MANAGEMENT BOARD, AND THE DEPARTMENT OF SCIENCE, TECHNOLOGY, AND THE ENVIRONMENT (DOSTE - WHICH REGULATES PATENTS AND TRADEMARKS) AGREED.  
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ALL SAID THEY WERE DOING THEIR BEST TO STOP INFRINGEMENTS, BUT THE PROCESS WAS COMPLICATED BY THE LARGE NUMBER OF DIFFERENT AGENCIES CHARGED WITH IMPLEMENTING AND ENFORCING IPR LAWS. THEY ALSO OPERATE WITH INADEQUATE RESOURCES AND UNDER CONSTRAINTS TO THEIR LEGAL AUTHORITY. FINES ARE NOMINAL AND LIMITS ON THEIR AUTHORITY MAKE IT DIFFICULT TO CATCH OFFENDERS AND ENFORCE THE LAW, THEY CLAIMED.

IPR IS IMPORTANT - IN THEORY

3. AT DOSTE, THE CHIEF OF THE INDUSTRIAL PROPERTY MANAGEMENT SECTION, MS. TRUONG THUY TRANG, EXPLAINED THAT FIVE AGENCIES WERE RESPONSIBLE FOR IPR ENFORCEMENT. HER OFFICE HANDLES THE REGULATION OF TRADEMARK AND PATENTS. A SEPARATE DOSTE INSPECTORATE IS RESPONSIBLE FOR ACCURATE PRODUCT LABELING. SHE ALSO CITED THE MARKET MANAGEMENT BOARD, THE ECONOMIC POLICE, CUSTOMS, AND THE CIVIL COURTS. SHE LEFT OUT THE DEPARTMENT OF CULTURE AND INFORMATION, WHICH REVIEWS AND CENSORS "SENSITIVE" MATERIAL, BUT IS ALSO

RESPONSIBLE FOR COPYRIGHT PROTECTION.

14. MS. TRANG ACKNOWLEDGED THAT THE ENFORCEMENT MECHANISMS WERE MORE THEORY THAN REALITY, BUT CLAIMED HCMC HAD THE BEST IPR ENFORCEMENT IN THE COUNTRY. ALTHOUGH HER AGENCY HAD NO DIRECT ENFORCEMENT ROLE, IT OFTEN TRIED TO MEDIATE BETWEEN RIGHTS-HOLDERS AND INFRINGERS. DOSTE COULD ALSO ADVISE ENFORCEMENT AGENCIES OF IPR VIOLATIONS, SHE SAID, BUT COULD NOT COMPEL THEM TO ACT. SHE STATED THAT WHILE THE MARKET MANAGEMENT BOARD "HAD ALL OF THE POWER," THEY WERE OFTEN LESS EFFECTIVE THAN DOSTE'S MEDIATION EFFORTS. SHE OFFERED TO LOOK INTO ANY SPECIFIC CASES OF CONCERN.

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15. THE DELEGATION TOOK THE BAIT AND ASKED ABOUT THE CASE OF HCMC'S "HARD ROCK CAF," RUN BY SOMEONE WHO DID NOT HAVE THE RIGHT TO THE TRADEMARK. THE US RIGHTS-HOLDER HAD FILED A COMPLAINT LAST YEAR TO TRY TO SHUT THE PLACE DOWN. MS. TRANG STATED THAT SHE WAS AWARE OF THE CASE AND HAD MET WITH THE OWNER IN A MEDIATION EFFORT. HE HAD PROMISED IN WRITING TO REMOVE THE OUTDOOR SIGNATURE "HARD ROCK CAF" SIGN FROM HIS ESTABLISHMENT. WHEN THE DELEGATION REMARKED IT WOULD BE VISITING THE SITE LATER THAT AFTERNOON, SHE BACKTRACKED AND STATED THAT THE LAW FIRM REPRESENTING THE RIGHTS-HOLDER HAD NOT ADVISED HER AS TO WHETHER THE SIGN HAD ACTUALLY BEEN REMOVED. SHE ALSO NOTED THAT DOSTE DID NOT HAVE AUTHORITY TO ENTER THE RESTAURANT TO SEE IF THE TRADEMARK WAS BEING USED IMPROPERLY INSIDE.

16. AT THE MARKET MANAGEMENT BOARD, WHICH IS RESPONSIBLE FOR ENFORCING ALL LAWS RELATING TO DOMESTIC TRADE IN THE CITY, DIRECTOR HUYNH TAN PHONG POINTED OUT THAT HIS OFFICE HAD WORKED WELL WITH A NUMBER OF FOREIGN COMPANIES WHO HAD IPR PROBLEMS, NAMING PHILIPS, PROCTER & GAMBLE, AND RICOH. (THE ATTORNEY WHO HAD REPRESENTED RICOH - WHICH WAS TRYING TO STOP THE SALE OF COUNTERFEIT TONER CARTRIDGES - HAD EARLIER TOLD THE DELEGATION THAT THE MMB WERE SO UNDER-RESOURCED THAT THE DIRECTOR HIMSELF VISITED A SHOP PRETENDING TO BE A BUYER, IN ORDER TO ID THE COUNTERFEITS.) MR. PHONG ACKNOWLEDGED THAT HCMC AND THE COUNTRY STILL FACED HUGE IPR PROBLEMS, BUT PLEDGED TO ASSIST WITH ANY IPR-RELATED

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REQUEST. WHEN ASKED ABOUT THE "HARD ROCK CAF" CASE, HE SAID THE FILE WAS STILL WITH DOSTE, SO HIS AGENCY DID NOT YET HAVE THE AUTHORITY TO TAKE ACTION.

17. OFFICIALS AT THE LOCAL DEPARTMENT OF TRADE ALSO REITERATED THE IMPORTANCE OF IPR ISSUES FOR HO CHI MINH CITY. DIRECTOR PHAM THI KIM HONG NOTED THAT ONE OF THE CITY'S MAJOR ECONOMIC DEVELOPMENT GOALS WAS TO ESTABLISH A LOCAL INFORMATION TECHNOLOGY INDUSTRY. THIS COULD ONLY HAPPEN IF INTELLECTUAL PROPERTY RIGHTS WERE TRULY PROTECTED. AT THE SAME TIME, HOWEVER, SHE DISAVOWED ANY ENFORCEMENT ROLE FOR THE DEPARTMENT OF TRADE. WHEN THE DELEGATION POINTED OUT THAT THE MARKET MANAGEMENT BOARD FELL UNDER HER DEPARTMENT'S JURISDICTION, SHE STATED IT WAS ONLY NOMINALLY SO, AND THAT THE MMB OPERATED AUTONOMOUSLY. DEPUTY DIRECTOR NGUYEN DINH MAI, WHO ALSO ATTENDED THE MEETING, STATED INFORMALLY TO ONE DELEGATION MEMBER THAT IPR CONCERNS NEEDED TO BE RAISED WITH THE HCMC PEOPLE'S COMMITTEE IN ORDER TO MAKE PROGRESS.

#### IPR VIOLATIONS HURT LOCAL BUSINESS

18. LOCAL VIETNAMESE BUSINESSPEOPLE WHO MET THE DELEGATION STRESSED THAT IPR INFRINGERS HAD AFFECTED THEIR BUSINESSES. MR. LE HONG THANH, DIRECTOR OF SAIGON AUDIO, A LOCAL RECORDING COMPANY, STATED THAT BECAUSE ALL OF HIS PRODUCTS WERE COPIED, IT WAS EXTREMELY DIFFICULT TO GENERATE PROFITS ON NEW MUSIC. IT WAS DIFFICULT TO SELL LEGITIMATE COPIES AND RECOUP COSTS, LET ALONE GENERATE PROFITS IN A MARKET WHERE PIRATED COPIES OUTNUMBERED LEGITIMATES BY ABOUT 20/30 TO ONE. TO GENERATE REVENUE, SAIGON AUDIO HAD TAKEN TO RE-

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RELEASING "OLDIES," WHICH COULD BE SOLD MORE CHEAPLY. THEY ALSO REDUCED THE NUMBER OF NEW RECORDINGS BY VIETNAMESE ARTISTS FROM 100 TO 40 PER YEAR. HIS COMPANY, ALONG WITH OTHERS IN THE LOCAL AUDIO AND VIDEO INDUSTRY, HAD SUBMITTED A PETITION TO THE CENTRAL GOVERNMENT ASKING FOR MORE COPYRIGHT PROTECTION. HE BELIEVES SOME PIRATED PRODUCTION IS OCCURRING IN VIETNAM, PARTICULARLY FOR LOCAL FILMS AND TAPES. THIS IS IN CONTRAST TO PIRATED COPIES OF AMERICAN AND OTHER FOREIGN FILMS/RECORDINGS, MOST OF WHICH ARE BELIEVED TO COME FROM CHINA.

19. MR. NGUYEN VINH LOC, THE LOCAL DISTRIBUTOR OF BOSE SPEAKERS, ALSO COMPLAINED THAT HIS COMPANIES HAVE TO COMPETE WITH FAKES. HE SAID SHODDY COPIES ARE IMPORTED FROM CHINA AND BETTER QUALITY COUNTERFEITS COME OUT OF TAIWAN. FALSE BOSE LABELS ARE ATTACHED ONCE THE PRODUCT ENTERS THE

COUNTRY. MR. LOC STATED THAT A COUPLE OF YEARS AGO, BOSE HAD TRIED WORK WITH LOCAL ENFORCEMENT AGENCIES AND AN ATTORNEY TO STOP THE SALE OF THE FAKES. HE CLAIMED THIS WAS COMPLETELY INEFFECTUAL. HE SUGGESTED THAT FOR IPR ENFORCEMENT TO WORK THERE MUST BE POLITICAL WILL AT A RELATIVELY HIGH LEVEL. HE FELT "THE VIETNAMESE WAY" WOULD BE TO GO THROUGH THE PEOPLE'S COMMITTEE AND URGE THEM TO SEND THE ORDER DOWN TO THE ENFORCEMENT AGENCIES. ONLY WORKING WITH THE AGENCIES DID NOT BRING RESULTS.

CDS, DVDS, AND EXPENSIVE T-SHIRTS

10. AT THE END OF THE DAY, THE DELEGATION VISITED A DOWNTOWN STREET LINED WITH SMALL SHOPS SELLING CDS AND DVDS, NONE OF WHICH APPEARED TO BE LICENSED COPIES. DVDS SELL FOR UNCLASSIFIED

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ABOUT 20,000 VND (ABOUTUSD1.20). MOSTLY LOCAL PRODUCT WAS DISPLAYED IN THE SHOPS, BUT FOREIGN FILMS AND AUDIO RECORDINGS WERE ALSO AVAILABLE. THE GROUP ALSO STROLLED OVER TO THE "HARD ROCK CAF" A FEW BLOCKS AWAY, WHERE THE SIGN WAS STILL OVER THE FRONT ENTRANCE. INSIDE, THE WALLS AND CEILING DRIPPED WITH ROCK N' ROLL EPHEMERA AND, STRANGELY, AUTO AND MOTORCYCLE PARTS. THE INTERIOR MIGHT NOT BE CONFUSED WITH ITS LICENSED COUNTERPARTS ELSEWHERE IN THE WORLD, BUT THIS PLACE DID HAVE A BOOTH BY THE DOOR SELLING EXPENSIVE "HARD ROCK CAF SAIGON" T-SHIRTS AND TRINKETS. EVEN WITH ALL OF THE EFFORTS BY A LOCAL LAW FIRM AND LOCAL AUTHORITIES, IT APPEARS THIS PLACE IS DOING BUSINESS AS USUAL.

COMMENT

11. ALL OF THE LOCAL OFFICIALS WHO MET THE DELEGATION SPOKE STRONGLY ABOUT THE NEED TO ATTACK VIETNAM'S IPR PROBLEMS AND ACKNOWLEDGED THAT WEAK IPR ENFORCEMENT WOULD ACT AS A BRAKE ON HCMC'S ECONOMIC DEVELOPMENT. THIS OFFERS SOME HOPE THAT, EVEN IN THIS DIFFICULT ENVIRONMENT, LOCAL OFFICIALS AND BUSINESS REALIZE THERE ARE CLEAR BENEFITS TO IPR PROTECTION. AT THE SAME TIME, IN THE SAMPLE CASE WE RAISED AT EVERY MEETING - THAT OF THE "HARD ROCK CAF" - OFFICIALS SEEMED READY TO PASS THE BUCK - TO OTHER AGENCIES OR EVEN TO THE LAW FIRM REPRESENTING THE RIGHTS-HOLDER. AND WHILE SPIDERMAN IS UNLIKELY TO DESCEND AND ROUND UP ALL OF THE SPECIAL INTERESTS PROFITING ON THE PIRATED GOODS AVAILABLE UNCLASSIFIED

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IN THE LOCAL MARKET, GOOD QUALITY COPIES OF SPIDERMAN ARE ALREADY AVAILABLE HERE ON DVD.

12. THE DELEGATION DID NOT HAVE AN OPPORTUNITY TO CLEAR THIS CABLE.

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